

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION**

JOHN SATTERWHITE,  
*Plaintiff,*

v.

TEXAS CUSTOM POOLS, INC. d/b/a  
RIVERBEND SANDLER POOLS and  
CHARLES BARNES,  
*Defendants.*

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Case No. 4:13-cv-429

**MEMORANDUM ADOPTING REPORT AND RECOMMENDATION OF THE  
UNITED STATES MAGISTRATE JUDGE**

Came on for consideration the report of the United States Magistrate Judge in this action, this matter having been heretofore referred to the United States Magistrate Judge pursuant to 28 U.S.C. § 636. On October 18, 2013, the report of the Magistrate Judge was entered containing proposed findings of fact and recommendations that Defendants' Motion to Dismiss (Dkt. 4) be DENIED.

The court has made a *de novo* review of the objections raised by Defendants (Dkt. 9) and is of the opinion that the findings and conclusions of the Magistrate Judge are correct, and the objections are without merit as to the ultimate findings of the Magistrate Judge.

Defendants object that Plaintiff has not pleaded sufficient factual content to allow the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. Defendants argue that Plaintiff "simply states that Defendants are liable by regurgitating the language contained within 29 U.S.C. §§ 206, 207, 216(b)."<sup>1</sup> However, Plaintiff does state sufficient factual content to survive Defendants' Motion to Dismiss. Plaintiff states that he was employed by Defendants as a driver, that during one or more weeks he worked more than forty

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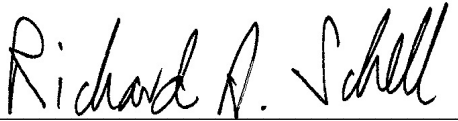
<sup>1</sup> Dkt. 9 at 2.

hours, and that defendants failed to pay him one and one-half times his regular rate of pay for each overtime hour worked.<sup>2</sup> “To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.”<sup>3</sup> In this instance, Plaintiff has satisfied this burden. Defendants also object that the Magistrate Judge relied on cases that “predate and/or are arguably overruled by the Supreme Court’s holding.”<sup>4</sup> Defendants do not make clear what case law they believe has been superseded by the Supreme Court. The court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of this court.

Therefore, Defendants’ Motion to Dismiss (Dkt. 4) is **DENIED**.

IT IS SO ORDERED.

**SIGNED this the 10th day of February, 2014.**

  
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RICHARD A. SCHELL  
UNITED STATES DISTRICT JUDGE

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<sup>2</sup> Compl. ¶¶ 5-8.

<sup>3</sup> *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotation marks omitted).

<sup>4</sup> Dkt. 9 at 1.